



Re: Appeal of Winsor Request (DRC2011-00043) 

Terry Wahler to: Curt Leslie

Bcc: Bill Robeson, Nancy Orton

01/31/2013 09:17 AM

Mr. Leslie,

Thank you for coming in and meeting with us last Friday (1-25-13) and reviewing the development plan application files that you wanted to review (D000263D, DRC2008-00005, and DRC 2011-00043). We made the copies of the information you requested on Friday and I understand they were picked up by you this past Monday, January 28, 2013.

The purpose of my email to you on January 10, 2013, was to give you an opportunity to submit additional materials (supporting evidence) prior to the completion of the staff report because you indicated in your written appeal submitted on August 9, 2012, that additional evidence would be submitted. Since we had not received additional written materials from you addressing the points raised in your appeal, we wanted to give you another opportunity to include them in time to be considered in our staff report. If they had been submitted in advance of staff report deadlines they could have been included and responded to in the staff report.

As I indicated Friday at our meeting, due to the time constraints in preparing the staff report I requested that additional materials be submitted to me on Monday, January 28, 2013. Since you were unable to submit additional information by Monday, any additional information you submit will need to be addressed orally at the hearing. However, that does not prevent you, or your attorney, from submitting additional information or evidence up to the date of the hearing that will be considered and responded to at the hearing. Any materials submitted to me after January 28, 2013, will be distributed to the Board and considered at the hearing on the appeal.

The staff report and related materials considered by the Planning Commission at the July 26, 2012 public hearing will be included in the Board staff report as an attachment because this is normally required anyway. If you want the verbal testimony from this hearing to be entered into the record for the appeal, you will need to request and pay for a DVD to be prepared, (or download it from the County website and make a DVD yourself) and submit it or a transcript of the proceeding to the Board at the hearing on the appeal.

As for the staff report for the October 28, 2010 Planning Commission hearing on the previous development plan (DRC2008-00005), we will not be including this along with our staff report. If you want it submitted for consideration by the Board, you will need to request a copy of this report and then submit it as part of your additional information packet.

Since you reviewed the three application files (D000263D, DRC2008-00005, and DRC 2011-00043) last Friday, and had the opportunity to look for and request copies of information you deemed important, I understand that previous email references to notes, pictures and letters have been obtained by you and will be submitted to me as part of the additional information packet you are intending to submit to me to support your appeal. I am not aware of any other materials you requested other than the information that is contained in the application files you inspected last Friday.

Sincerely, Terry Wahler

Curt Leslie

Mr. Wahler, Thank you and Mr. Robeson for taki...

01/28/2013 09:54:39 AM

From: Curt Leslie <curtleslie33@gmail.com>
To: twahler@co.slo.ca.us
Date: 01/28/2013 09:54 AM
Subject: Re: Appeal of Winsor Request (DRC2011-00043)

Mr. Wahler,

Thank you and Mr. Robeson for taking the time to meet with us last Friday and allowing Anne and I access and time to review the volumes of files associated with this case.

Though we appreciate the time sensitivity for inclusion of any additional "evidence" that we may want to have Planning Staff consider for their report, the problem is that the requested copies we asked for are only being made available to us today and since your deadline for submittal is this morning, clearly we have not been afforded adequate time to review much of the "new" information with our attorney or the ability to organize and submit what additional documentation we would like to be included for consideration in said Staff Report. I am sure this was not your intention; I will work diligently with my attorney to expedite our response in a timely manner. You will have our response by week's end.

Sincerely,

Curtis & Anne Leslie



Re: Appeal of Winsor Request (DRC2011-00043)

Yahoo! Member Service to: twahler

01/21/2013 12:52 PM

3 attachments



Neder letter 1.pdf Neder letter 2.pdf DFG Robertson Report.pdf

Mr. Wahler,

I am e-mailing some of the evidence I wish to present at the upcoming Board of Supervisors Appeal hearing slated for the 26th of February 2013. I will be sending you a number of e-mails with attachments and would also like to schedule a meeting to hand you hard copies of the evidence and documentation as well. Since you have stated that there is a deadline for said submittal, I would appreciate an hour of your time on Thursday January 24, 2013 to review these documents.

Attached to this e-mail is the partial (16 of the 44 pages) California Department of Fish & Wildlife (DFG) / Robertson Report that is currently being prosecuted by the San Luis Obispo County District Attorney, I am sure that the Planning Department can get the complete report from the District Attorney. I am submitting this report to substantiate that contrary to staff testimony at the July 26, 2012 Planning Commission hearing, Mr. Robertson has in fact illegally cleared, graded and surfaced a road through all four properties owned and controlled by Mr. Robertson. This illegally built new road now enables this owner direct access to an alternate easement, namely Van Gordon Creek Rd. As you know, all four of the properties under Mr. Robertson's corporate ownerships are subject to the Development Plan(s) D870020D & D00263D, LCP and CZLUO. All four Robertson properties are party to and restricted by the two Association's CC & R's, namely Cambria Ranch Road Association (CRRA) and San Luis Obispo County Cambria Ranch Owners Association (SLOCCROA). In addition, to this "alternate" access this owner now controls over 350 combined acres.

Why this is relevant, is that, as you might recall the two reasons given by County Planning Staff for support of release for Mr. Winsor's parcel were;

One: The Winsor parcel is now, (by virtue of lot line adjustments) large enough to have been excluded when the original development was permitted.

Two: The Winsor's have an alternate route.

The "LEGAL" precedence set by this quasi-legal release will most certainly allow others to follow and the County will be unable to "legally" prevent it. Mrs. Neder-Miller assured us (after the 2000 release of the Apitz's property), that any future release would have to be by unanimous vote of all members and be made with the approval of all seven county and state agencies. When Apitz was released, a land slide destroyed the access road and Mr. Apitz lost the "benefit". In this case, Mr. Winsor's release is not unanimous and Mr. Winsor's "benefit" is intact and still being used by Mr. Winsor and tenants living on his adjoining properties. In essence, Mr. Winsor "resigned" his membership as noted in the settlement.. Since CRRA is a California Mutual Benefit Non-Profit Corporation, Mr. Winsor's resignation does not relieve him of his

membership in SLOCCROA or CRRA, nor does it relieve him of his obligation to pay dues as owner of said parcel as per California Corporate Code Section 7340. (a) and (b) and as per CRRA CC&R's The Covenant to Pay. In addition it does not relieve him from the additional development restrictions clearly stated in the Development Plans.

Mr. Wahler, I have a few more requests for information:

I would also like to include as evidence for Planning Staff to consider the County verbal testimony (the DVD's) and Staff Reports from both hear the July 26, 2013 and the October 2011 Planning Commission hearings as well as all support documentation, maps and photographs submitted by all parties involved, to include the "petition for release" circulated by Mr. Winsor and submitted prior to the July 2012 hearing as well as letters correspondences with County planner Martha Neder-Miller.

To prepare my appeal, I will also need Mr. Robeson's and Mr. Knall's notes from the meeting held September 23, 2008 and from the initial meeting with Mr. Robeson prior to this meeting. I know Mr. Robeson has a file I have seen, it and the photographs submitted to Mr. Robison by Mr. Winsor.

Thank you for you help with this matter,

Sincerely Curtis J. Leslie

From: "twahler@co.slo.ca.us" <twahler@co.slo.ca.us>

To: Curtis Leslie <counterfactory@sbcglobal.net>

Sent: Thu, January 10, 2013 4:06:01 PM

Subject: Appeal of Winsor Request (DRC2011-00043)

Mr. Leslie,

As we discussed in our telephone conversation this week, we are targeting February 26, 2013 for the public hearing at the Board of Supervisors to consider your appeal. You indicated that this date would work with your schedule.

In reading through the appeal package dated August 9, 2012 I noticed under the "Basis For Appeal" in the attachment to the appeal form (enclosed for your reference) you were concerned about which appeal form was the correct one to use. The form that you filled out was acceptable for the purposes of meeting the filing deadline, however you indicated that you would "....introduce new evidence....". I have not yet received any additional correspondence from you and would like to offer you an additional opportunity to include this in time for it to be reviewed and responded to in the written staff report. Based on our internal staff report deadlines, I would need to receive additional information from you in two weeks (by January 24, 2013) in order for it to be responded to in the written staff report. We are in the process of scanning the Environmental documents that you were interested in reviewing. I will transmit them to you electronically when the scanning has been completed.

If you have any questions please call me at 781-5621.

Thank you, Terry Wahler

Attachment 3

(See attached file: DRC2011-00043_WINSOR_Appeal-attachment.pdf)

**Terry Wahler, Senior Planner
Land Conservation Program &
Master Planned Communities
(805) 781-5621**

[Scanned @co.slo.ca.us]

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME
NARRATIVE/SUPPLEMENTAL
WPD 6b p.2 (10-98)

Region # NCED Page 5 of 7

DATE OF INCIDENT/OCCURRENCE 01/19/2012	TIME (2400) 1200	CITY/COUNTY/JUDICIAL JURISDICTION Van Gordon Creek- Cambria/ SLO Co./ SLO Superior
"X" APPLICABLE <input checked="" type="checkbox"/> Narrative <input type="checkbox"/> Arrest Report <input type="checkbox"/> Supplemental <input checked="" type="checkbox"/> Formal Complaint		TYPE OF REPORT ("X" APPLICABLE) <input type="checkbox"/> Commercial Fishing <input type="checkbox"/> Hunting <input checked="" type="checkbox"/> Inland Pollution <input type="checkbox"/> Incident Report <input type="checkbox"/> Recreational Fishing <input type="checkbox"/> Trapping <input type="checkbox"/> Marine Pollution <input checked="" type="checkbox"/> Other
Location/Subject/Incident Name Van Gordon Creek/ Dave Robertson, Jeffrey Brown, George Christidis		Arresting/Case Officer B. Meyer #800 Citation Number AD2064718 AD2064719 AD2064791

57. subjects near the pond were later positively identified as Richard Randolph Bartley (DOB [REDACTED] and DOB [REDACTED], Jeffrey Brown (DOB [REDACTED] and DOB [REDACTED]), and George Pete Christidis (DOB [REDACTED] and DOB [REDACTED]). I contacted the subjects and identified myself and my agency. I spoke with Christidis first, who told me he was in charge. I asked Christidis what kind of work they were doing. Christidis replied, "We are beautifying the area." I asked Christidis when the work was done. Christidis responded, "About two to three weeks ago." I asked Christidis who the other two subjects were (Bartley and Brown). Christidis told me, "Oh, they are just consultants. They aren't doing any work." Christidis advised me he did not know who was doing the actual excavation and the work. Christidis told me he does not oversee the operation and he rarely comes by the area. I asked Christidis who the property belonged to and who was in charge. Christidis said, "Dave, he's my boss. I'm his assistant." I asked Christidis for Dave's phone number. Christidis told me, "I don't have Dave's phone number and I forgot my cell phone in my hotel room." By the way Christidis answered my questions, it appeared he was not being truthful. I asked Christidis why the creek was dug out and large rocks placed along the bank. Christidis said, "The rocks were put there to keep the water from gushing over."

71 I asked Brown and Bartley why they were there and what kind of work they were doing. Both Brown and Bartley said they were just landscaping consultants and they were not doing any physical work. I asked Brown and Bartley if they were aware of streambed alteration permits with the state of California. Both Bartley and Brown told me they were aware of the permitting process. Warden Chance noticed Brown wore a "Caterpillar" hat and he asked who was operating the heavy equipment. Brown answered, "I am." I asked Brown who conducted the pond and creek excavation. Brown said, "I did the pond and creek by the pond. I started on it about a month ago. I cleaned out the pond. I cleared out the creek first and then the pond. All of the work was done with the heavy equipment that is here. The work was being done to beautify the area and for water storage." I told Brown that all the work needed to cease and he was to put straw wattle around all the sediment piles. Brown immediately left to get straw wattle.

81 I asked Christidis why he was being untruthful with me and he told me he did not want to answer any other questions. I spoke with Bartley and asked him some questions. Bartley told me he was a landscape architect. In summary, Bartley told me he was there to plan where to put trees and plants in the area. Bartley told me, "I was out here about 3 weeks ago and the work was half way done. I have met Dave a couple times but I have dealt with George (Christidis) directly."

Preparer's Name and Badge Number Wdn. B. Meyer #800	Date 02/13/2012	Reviewer's Name Wdn. J. Chance #631	Date 02/13/2012
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STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME
NARRATIVE/SUPPLEMENTAL

WPD 6b p.2 (10-98)

Region # NCED Page 4 of 7

DATE OF INCIDENT/OCCURRENCE 01/19/2012		TIME (2400) 1200	CITY/COUNTY/JUDICIAL JURISDICTION Van Gordon Creek- Cambria/ SLO Co./ SLO Superior	
"X" APPLICABLE <input checked="" type="checkbox"/> Narrative <input type="checkbox"/> Arrest Report <input type="checkbox"/> Supplemental <input checked="" type="checkbox"/> Formal Complaint		TYPE OF REPORT ("X" APPLICABLE) <input type="checkbox"/> Commercial Fishing <input type="checkbox"/> Hunting <input checked="" type="checkbox"/> Inland Pollution <input type="checkbox"/> Incident Report <input type="checkbox"/> Recreational Fishing <input type="checkbox"/> Trapping <input type="checkbox"/> Marine Pollution <input checked="" type="checkbox"/> Other		
Location/Subject/Incident Name Van Gordon Creek/ Dave Robertson, Jeffrey Brown, George Christidis			Arresting/Case Officer B. Meyer #800	Citation Number AD2064718 AD2064719 AD2064791

- 29 Description- Large sediment pile uphill from creek
- 30 Location # 5- N 35° 37.714
- 31 W 121° 05.727
- 32 Description- Large sediment/ brush pile adjacent to creek
- 33
- 34 Location # 6- N 35° 37.724
- 35 W 121° 05.691
- 36 Description- Large sediment/ brush pile, rock/ rubble deposit at road crossing at creek
- 37
- 38 Location # 7- N 35° 37.707
- 39 W 121° 05.604
- 40 Description- Rock/ Rubble deposit near creek/ stripped vegetation on steep slope above creek
- 41
- 42 Location # 8- N 35° 37.635
- 43 W 121° 05.604
- 44 Description- Rock/ Rubble deposit near creek/ stripped vegetation on steep slope above creek
- 45
- 46 Location # 9 N 35° 37.714
- 47 W 121° 05.030
- 48 Description- Excavated pond and Van Gordon Creek tributary
- 49
- 50
- 51 Location # 9 was the most significant damage and alteration I saw during my investigation. This was the last location I
- 52 saw and when I arrived at location # 9, I noticed three subjects standing near heavy equipment. The area appeared
- 53 freshly excavated. It appeared to me that a pond was dug out and the creek was also dug out with heavy machinery. The
- 54 vegetation in the area was stripped and the banks of the stream were freshly lined with large rocks. It also appeared the
- 55 stream was diverted to supply the pond with water during an overflow period. The stream was dug out and all the loose
- 56 sediment was placed along the stream. There was a large, unprotected sediment pile placed near the pond. The three

Preparer=s Name and Badge Number Wdn. B. Meyer #800	Date 02/13/2012	Reviewer=s Name Wdn. J. Chance #631	Date 02/13/2012
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STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME
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Region # NCED Page 6 of 7

DATE OF INCIDENT/OCCURRENCE 01/19/2012	TIME (2400) 1200	CITY/COUNTY/JUDICIAL JURISDICTION Van Gordon Creek- Cambria/ SLO Co./ SLO Superior
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85 Bartley showed me a blueprint of the work being done in the area. The name of the Project was "The Reserve at San
86 Simeon." The name of the drawing was "Schematic design for Chang's Pond." The blueprint showed an elaborate plan
87 for the creek and pond area including a mojito bar, a tented area, and much more. I seized the blueprint and issued
88 Bartley an evidence receipt (Attachment B).
89

90 I noticed two subjects arrive on an ATV. I identified one of the subjects as Dave G. Robertson (CD ~~REDACTED~~) and
91 ~~DOB 04/11/1978~~ I asked Robertson if this was his property and if he was in charge of the work being done. Robertson
92 replied, "Yes." I asked Robertson if he had any permits or an agreement with the Department of Fish and Game for the
93 work he was conducting on his property. Robertson told me, "No, I don't have any permits." I asked Robertson when he
94 began the work. Robertson said, "We started about four to five weeks ago. The pond was here before we started. It had
95 some water in it but it was mostly silted in." I asked Robertson if Christidis worked for him. Robertson replied, "Yes, he
96 is my assistant." I told Robertson that he was in violation of FGC 1602(a) - it is unlawful to substantially divert or
97 obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of any river,
98 stream, or lake and FGC 5650(a)(6)- it is unlawful to deposit in, permit to pass into, or place where it can pass into the
99 waters of this state any deleterious substance. I took photos of the area (Attachment A) and left the area.
100

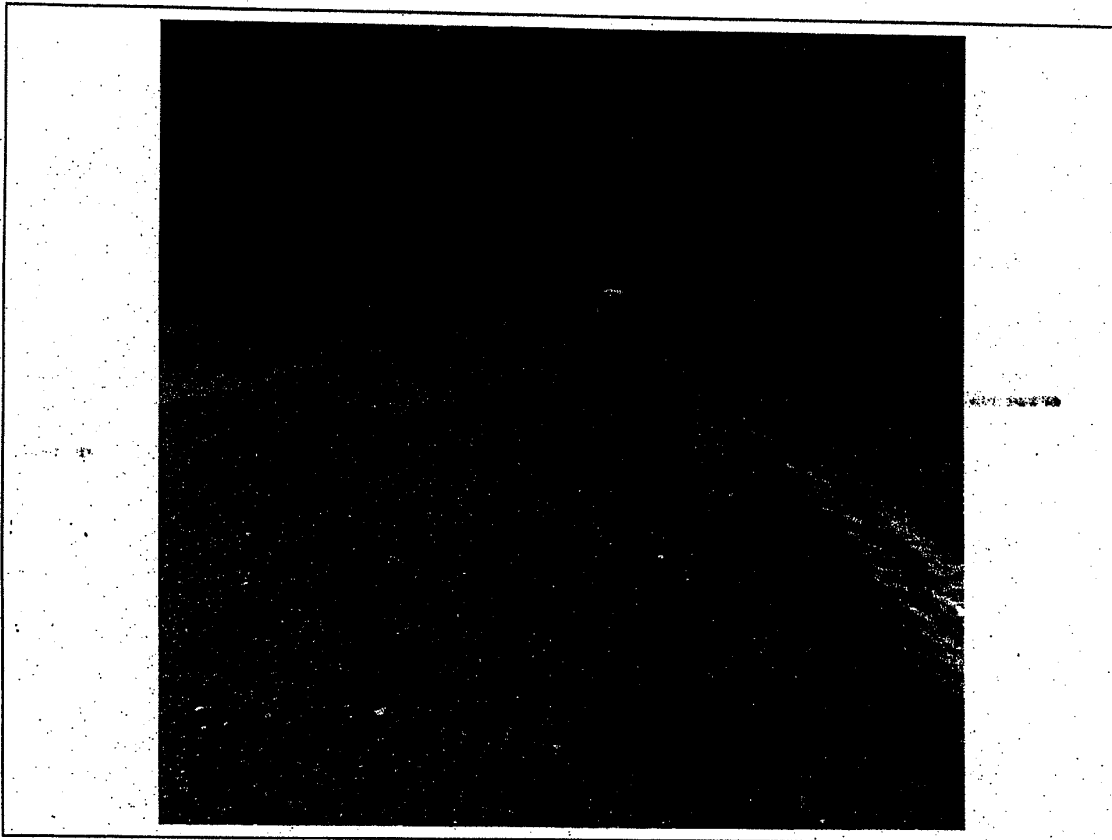
101 I returned to 8455 Red Mountain Road in Cambria on 1/23/2012 with Warden J. Chance and CDFG Environmental
102 Scientist Rob Tibstra. I accompanied Tibstra as he compiled information for a Natural Resource Injury Assessment
103 (NRIA- Attachment C) of the disturbed area. Robertson arrived and accompanied us for a short time. I saw that
104 Robertson, Brown, and Christidis placed straw wattle around most of the sediment piles and ceased all work. On this
105 day the weather was rainy with heavy downpours. I noticed much of the sediment in the disturbed area was washing into
106 the creek. I saw some of the native wildlife Tibstra pointed out, such as the Coast Range Newt.
107

108 Based on my observations, Brown's, Robertson's, and Christidis' statements, along with Tibstra's NRIA, I request the
109 San Luis Obispo County District Attorney file the following misdemeanor charges against Robertson, Brown, and
110 Christidis:
111
112

Preparer=s Name and Badge Number Wdn. B. Meyer #800	Date 02/13/2012	Reviewer=s Name Wdn. J. Chance #631	Date 02/13/2012
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ATTACHMENT C

NATURAL RESOURCE INJURY ASSESSMENT



**VAN GORDON CREEK AND TRIBUTARIES
STREAM ALTERATION ACTIVITY
RIPARIAN HABITAT REMOVAL AND DISTURBANCE
EXCAVATION, CHANNELIZATION, AND SEDIMENT DISPOSAL
SAN LUIS OBISPO COUNTY**



State of California
Resources Agency
Department of Fish and Game
Central Region

Natural Resource Injury Assessment
Van Gordon Creek, San Luis Obispo County

Introduction

This document summarizes the streambed alteration activity conducted without a Streambed Alteration Agreement (Agreement) within the Van Gordon Creek watershed, a tributary to San Simeon Creek in San Luis Obispo County.

The following events are related to this assessment:

- On January 19, 2012, California Department of Fish and Game (CDFG) Wardens Brian Meyer and Jason Chance investigated illegal stream alteration activity along Van Gordon Creek, tributary to San Simeon Creek. The disturbed areas described below occurred on Dave Robertson's property at 8455 Red Mountain Road, Cambria, CA. The wardens made initial investigations and confirmed that illegal activity had occurred. They observed several areas along Van Gordon Creek and associated tributaries where work was conducted that fell within CDFG's jurisdiction. They issued a cease work order, interviewed suspects, and initiated an investigation into the violation.
- On January 23, 2012, a subsequent site investigation was conducted by Wardens Meyer and Chance, and Environmental Scientist Robert Tibstra. The purpose of this visit was to collect data on the work conducted that was in violation of Fish and Game Code sections 1602 and 5650.
- On March 1, 2012, another site investigation was conducted by Meyer and Tibstra, for the purpose of collecting additional measurements and GPS data.
- On April 19, 2012, a final site visit was completed by Meyer and Tibstra for the purpose of conducting a visual encounter survey for amphibians within the project area.

CDFG (Department) Jurisdiction

For purposes of determining jurisdiction under Fish and Game Code, Section 1602, a stream is a channel with a recognizable bed or bank, through which water flows at some time during the year, regardless of whether the flow is surface or subsurface flow. The banks associated with a channel extend vertically and horizontally away from the channel, a distance which varies site to site. Riparian vegetation is a basic component of bank structure and the riparian ecosystem, and therefore is considered an integral part of the bank. Likewise, streams routinely flood over their banks into a floodplain zone, which often contains riparian vegetation and also is considered part of the stream. This interpretation of a stream is widely used throughout the Department's Central Region as well as other regions, and was used in this case for Van Gordon Creek and its tributaries, whether or not they contained water during the site visits. A Lake is a perennial, intermittent, or ephemeral body of water substantially at rest within a defined boundary. This definition was applied to the excavated pond in this case; the word

Natural Resource Injury Assessment
Van Gordon Creek, San Luis Obispo County

Trustee Agency Authority

The Department is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA) for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities as those terms are used under CEQA.

Responsible and Lead Agency Authority

The issuance of a SAA is subject to CEQA review. The Department, as a Responsible Agency under CEQA, would consider the CEQA document prepared for the Project. The CEQA document should fully identify the existing and potential impacts to streams and provide adequate avoidance, mitigation, monitoring and reporting commitments for completion of the SAA.

The Department functions as the Lead Agency when it is the only agency issuing a permit and no other agency is involved, as is sometimes the case when issuing an SAA. As Lead Agency, the Department has the principle responsibility for carrying out or approving a project, and therefore is principally responsible for preparing a CEQA document. As a Lead Agency, the Department would determine whether a Negative Declaration or Environmental Impact Report (EIR) will be prepared (CEQA Statutes, Sections 21080.3 and 21104.2; Guidelines, Sections 15050 and 15367).

Water Rights

The California Constitution provides that the State's water resource belongs to all Californians, and its diversion and use is limited to reasonable and beneficial application. The State's system of water rights is administered by the State Water Resources Control Board (SWRCB), through its Division of Water Rights. The Department, as trustee agency, is consulted by the SWRCB during the water rights permit application process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources.

Water rights may be either riparian or appropriative. These two types of water rights differ substantially. Riparian water rights are correlative (i.e., shared), and not based on a priority system. A riparian right allows owners of parcels adjacent to surface waters being diverted to divert water for use, provided the water is not stored longer than 30 days, is not used on non-riparian parcels of land, and is not transported out of the watershed from which it has been diverted. Appropriative water rights differ in that they are based on a priority system of first in time - first in right among other appropriative

Natural Resource Injury Assessment
Van Gordon Creek, San Luis Obispo County

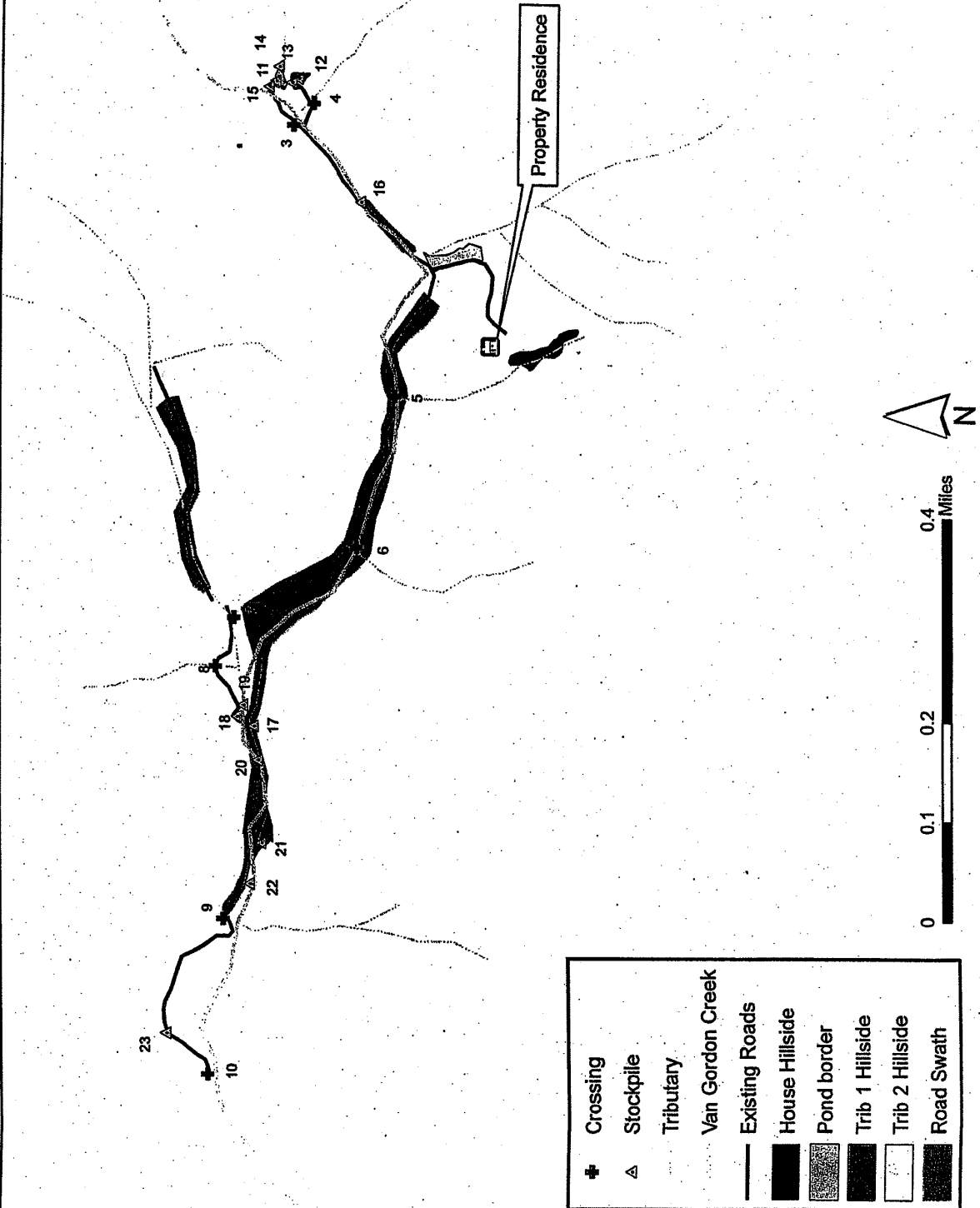
Study Area and Methods

The location of the disturbed area (referred to as Study Area) includes an approximately 1.25 mile stretch of existing dirt road along Van Gordon Creek, tributary to San Simeon Creek in northwestern San Luis Obispo County (Figure 1). The downstream end of the violation lies 2.9 river miles from the confluence of Van Gordon and San Simeon Creeks, while the upstream end is 4.04 miles from the confluence. The following sensitive species are potentially present within the Study Area (or downstream of the Study Area where they could be influenced by Project activities), according to the California Natural Diversity Database (CNDDB), personal observations, CDFG files and communications: the Federally Threatened and State Species of Special Concern California red-legged frog (*Rana draytonii*), the Federally Threatened south-central California coast steelhead (*Oncorhynchus mykiss*), California Species of Special Concern foothill yellow-legged frog (*R. boylei*), California Species of Special Concern coast range newt (*Taricha torosa torosa*) and California Species of Special Concern western pond turtle (*Actinemys marmorata*), in addition to various other bird, amphibian, reptile, and mammal species. The riparian area disturbed is characterized by the presence of Coast live oak (*Quercus agrifolia*), California bay (*Umbellularia californica*), California sycamore (*Platanus racemosa*), toyon (*Heteromeles arbutifolia*), and an understory consisting primarily of poison oak (*Toxicodendron diversilobum*).

Within the Study Area, there were several activities that occurred and are grouped into 4 categories for clarity (Figure 2 shows the locations of the activities).

- **Activity 1.** A pond bordering an unnamed tributary to Van Gordon Creek at the northern end of the Study Area was excavated and lined using a gel-like substance, possibly bentonite due to its consistency and the presence of pallets of the material at the property residence. The tributary bordering the pond was channelized and straightened and work began in lining the tributary with rip-rap. These activities were all within 1602 jurisdiction and in violation of that Section of the Fish and Game Code (FGC). In addition, the placement of materials such as bentonite and sediments directly within the channel and pond are in violation of FGC Section 5650 (a)(6), as well as potential water rights violations.
- **Activity 2.** Stockpiles of spoils and sediments of various particle sizes were found placed throughout the Study Area in areas where they could potentially wash into Van Gordon Creek or its tributaries. This activity was in violation of FGC Section 5650 (a)(6).
- **Activity 3.** There were 8 locations of stream crossings within the Study Area that had been modified in various ways, including installation of rock armor, placement of fill directly in the channel, placement of fill over a culvert, and installation of two bridges for vehicles and one footbridge. Each location was in violation of FGC Section 1602, and where fill was placed in the channel, in violation of FGC Section 5650 (a)(6).
- **Activity 4.** Along the road that borders Van Gordon Creek, a consistent swath of riparian, understory vegetation was removed. In addition, a hillside next to the excavated pond and channelized tributary was cleared of vegetation, a hillside

Figure 2. Locations of disturbance on Van Gordon Creek and Tributaries, San Luis Obispo County.
Numbers correspond with I.D.s on Tables 1 – 3.



File: D:\Data\2Reference\GIS\Van Gordon Creek Violation.mxd

Natural Resource Injury Assessment
Van Gordon Creek, San Luis Obispo County

Results and Discussion

Activity 1—Pond and Tributary Modification

A pond, located adjacent and parallel to a tributary to Van Gordon Creek, was excavated and lined with a gel-like substance (Figure 2, Appendix A). Due to the presence of 3 pallets of "Premium Gel—Bentonite" located at the property residence, I suspect that material was used to seal the pond. The pond measured 140 feet long, was in a tear drop shape, with its wider base (51.5 feet wide) on the western edge (downstream) and closest to Van Gordon Creek, and its narrower side upstream on the tributary (30 feet in width). The pond had standing water, with the water level 3.5 feet from the top of bank. The surface area of the pond is estimated at 0.13 acres (5,705 ft²). The pond contained 2 inches in depth of the gel substance (35.22 cubic yards) and 2 inches of gravel placed on top of the gel (35.22 cubic yards) (Table 1; I.D. "01").

The tributary adjacent to the pond measured 10 feet wide from bank to bank, and was channelized and straightened for 248 feet in length. Large rocks (24—36 inches diameter) were placed in the channel for a distance of 100 feet from the upstream end to the location of a large sycamore that exists near the upstream edge of the pond. The total area of the tributary disturbed in this area was 0.06 acres (2,480 ft²). The amount of rock placed in the tributary measured 74.07 cubic yards (Table 1; I.D. "02"). Any existing substrate or associated riparian vegetation was removed as the tributary consisted of water flowing through a dirt-lined channel, devoid of vegetation or substrate of any dimensions other than fine sediment/clay soils (Appendix A).

Activity 2—Stockpiles of Sediment

There were several areas in which spoils, consisting of fine sediments, gravels, and rocks, were stockpiled. They are summarized in Table 2, their locations are shown on Figure 2 (I.D.s "11—23"), and representative photographs are include in Appendix A. A total of 242.71 cubic yards of stockpiled sediments were placed in various piles throughout the Study Area, in areas where they could wash into the stream.

Activity 3—Stream Crossings

There were 8 stream crossings modified (Table 1, Figure 2; I.D.s "3—10"). Five of the crossings were modified by placing fill directly in the stream and totaled 141.15 cubic yards of sediment, sizes of which ranged from fine sediments to 12 inch diameter rock (Table 1; Appendix A). In addition, two vehicle bridges were installed on tributaries, and one footbridge made of three (3) 4X8 sheets of oriented strand board (OSB) was installed on a tributary.

Activity 4—Cleared Vegetation Along Road and Hillside

The hillside adjacent to the property residence was cleared of vegetation. The area cleared was bisected by a tributary that eventually connects to Van Gordon Creek (Table 3; I.D. "24", Figure 2). The area cleared measured 0.57 acres.

Table 2. Activity 2. Sizes of stockpiles of sediment placed in areas where they could enter the stream. "I.D." refers to the location as shown on Figure 2. Refer to the Figure for the specific locations of stockpiles; the order of I.D.'s follows a generally east-west direction.

I.D.	General Location	Material (particle size)	Volume (cy)
11	Excavated pond area	Silt/Clay or Sand (< 0.08")	131.85
12	Excavated pond area	Cobble (10—12")	4.65
13	Excavated pond area	Boulder (24 – 30")	12.56
14	Excavated pond area	Cobble (10—12")	20.67
15	Excavated pond area	Cobble (8—10")	3.00
16	Along VG Creek	Cobble (8—10")	0.33
17	Along VG Creek—treehouse area	Gravel (1—2")	16.67
18	Along VG Creek—treehouse area	Cobble (6—8")	5.19
19	Along VG Creek—treehouse area	Silt/Clay or Sand (< 0.08")	5.93
20	Along VG Creek	Silt/Clay or Sand (< 0.08")	14.67
21	Along VG Creek	Silt/Clay or Sand (< 0.08")	5.06
22	Along VG Creek	Cobble (8—10")	5.33
23	Along VG Creek	Gravel (1—2")	16.80
		Total	242.71

At I.D. "25" (Table 3, Figure 2), a 0.40 acre area hillside between a tributary to Van Gordon Creek and the road that leads from the property residence to Van Gordon Creek was cleared of understory vegetation.

The hillside adjacent and east of the tributary affected in Activity 1 near the pond was cleared of vegetation (Table 3; I.D. "26", Figure 2). The site was a relatively steep slope and measured 0.12 acres. The vegetation from the hillside was pushed, apparently by heavy equipment, to the upper edge of the hillside (Appendix A), and consisted primarily of toyon, including one that measured 7 inches diameter at breast height (d.b.h.). In addition, a trail was cut at the upstream end of the disturbed tributary, on the right bank (looking downstream). The trail extended 50 feet up the hillside and was composed of 4 switchbacks, each approximately 70 feet in length. The trail was 5 feet wide, and due to the relatively steep slope into which it was cut, the trail was lined with steep, cut banks of bare soil a minimum of 2 feet high (Table 3; I.D. "27"). California bay trees are distributed within the switchback area.

An area along the road throughout the Study Area was cleared of understory vegetation (Table 3; I.D. "28", Figure 2). Young California bay trees remain scattered, and the understory was cut at ground level. The disturbed area ranged from 0 feet to 200 feet from each side of the road, and slopes ranged from 0° to 85°.

The total area affected from Activity 4 was 13.27 acres, and represents a potential contribution of 16.32 cy of sediment erosion per year (Table 3) in its current condition.

Impacts to Sensitive Species Present in Study Area

An individual ranid frog was observed on March 3, 2012 as it entered a pool. A positive identification was not possible due to the distance and limited time the frog was observed. However, on April 19, 2012, a total of five subadult California red-legged frogs (CRLF) were observed within the Study Area (Figure 3, Appendix A). One frog was found along the bank of the creek along a run, whereas the other four were found in pairs associated with two pools. These frogs typically breed in slow moving areas of coastal streams associated with aquatic vegetation. The frogs within the study area likely use the Creek as refuge during the higher winter flows, and as rearing areas for young frogs, until they reach sexual maturity and reproduce further downstream, where extensive breeding habitat exists. The coast range newt makes annual migrations to breeding sites, including Van Gordon Creek, from upland areas over 1 mile away. Eight newts were observed throughout the Study Area on January 23, 2012 during a site investigation (Figure 3, Appendix A), one newt was observed in Van Gordon Creek on March 1, 2012 (Figure 3, Appendix A), and twelve adult newts were observed on April 19, 2012 within the stream, in addition to several newt egg masses scattered throughout the study area within the stream on April 19, 2012 (Figure 3, Appendix A). The adults were found on roads, adjacent to roads, and adjacent to and within the Creek. The CNDDDB has documented California red-legged frogs within San Simeon Creek. Foothill yellow-legged frogs (FYLF) have been documented in watersheds to the north, including Little Pico Creek and San Carpoforo Creek as recently as 1999 (CNDDDB data) and historically both CRLF and FYLF co-occurred in San Simeon Creek near Highway 1 (M. R. Jennings personal communication). The habitat present could very well support

Natural Resource Injury Assessment
Van Gordon Creek, San Luis Obispo County

FYLF, and further surveys would be valuable in assessing this potential, as it is a species that has declined in recent years. While western pond turtles were not detected during site investigations, they have been documented further downstream and are typically associated with pool-type habitat when found in streams. The filling of pools with sediment decreases the amount of habitat available for this species. No steelhead or fish of any species were observed during site investigations, although the project activities could reasonably be expected to influence their habitat downstream. Steelhead have been documented in Van Gordon Creek downstream of the Study Area, near its confluence with San Simeon Creek (D. Highland, personal communication), and their range on the CNDDDB includes Van Gordon Creek, up to 1 mile downstream from the Study Area. Steelhead begin their annual migrations to freshwater spawning grounds from the ocean from December through March, and they spawn in riffle habitats found in creeks. Steelhead require relatively clean gravels when spawning. The introduction of excessive fine sediment is known to bury spawning gravels, making the gravels unavailable, suffocating eggs, smothering and killing invertebrates which provide food, and increasing turbidity, which can negatively affect respiration over gills and decrease visibility for trout, which are visual predators. The modifications described in Activities 1, 3, and 4 present a direct impact to habitat for California red-legged frog, foothill yellow-legged frog, western pond turtle, and coast range newt by directly disturbing areas where they potentially occur. The sediments introduced into the stream can interfere with respiration underwater through gills, directly fill pools, smother and suffocate egg masses and increase turbidity which affects visual predators. During site investigations, more newts and frogs were detected within pools than other habitat types. The loss of pools due to filling by fine sediments has the ability to directly reduce habitat quality for these species. The sediments transported downstream could potentially bury steelhead eggs incubating in gravels.

Immediate Corrective Measures Taken

The risk of erosion of fine sediments to the stream system is a critical impact that needs to be addressed immediately. Temporary erosion-control measures were approved by DFG and taken by the Responsible Party on February 6, 2012. These included the installation of jute netting over bare hillsides, the covering of stockpiles with plastic sheeting, the lining of stockpile bases with coir fabric rolls, and the placement of fiber rolls at strategic locations on the bare hillsides. These measures were an important first step and will minimize the amount of erosion to the stream system in the current rainy season. No further cutting of the understory vegetation should occur, and the areas should be allowed to naturally re-vegetate. In addition, riparian vegetation should be planted within the "road swath" areas to encourage re-growth. Species should include sycamore, California bay, and other appropriate native species. The areas cleared of understory vegetation will require the least amount of active management to recuperate, provided no further cutting is allowed.

Long Term Corrective Measures to be Taken

A Restoration Plan should be submitted to the Department as part of a Streambed Alteration Notification (Notification) to be implemented as soon as possible. If possible, work would begin in the Fall of 2012, but only if all permitting requirements, including

**Natural Resource Injury Assessment
Van Gordon Creek, San Luis Obispo County**

from state, federal, and local agencies, are obtained. The Plan should specify what measures will be taken to restore the disturbed habitats to their pre-project conditions. The Department will process the Notification and write a draft Streambed Alteration Agreement (Agreement). The draft Agreement shall be sent to the permittee, who will return a signed copy to the Department. The Department will then issue a final Agreement, provided that the project has been independently addressed through the CEQA process. All work will adhere to the measures and conditions contained in the Agreement. Any other applicable permits will also need to be obtained and are the responsibility of the Responsible Party. The Plan should include, but not necessarily be limited to, the following:

- Return the pond to its pre-project condition, including removing the gel-like substance and the gravel and disposing of them at an appropriate and legal off-site location.
- Restoration of the channelized tributary, including re-grading banks if necessary, installation of appropriately-sized substrate, and planting of riparian species to return the tributary to a more natural state. A restoration plan shall be submitted to the Department as part of the Notification, completed by a qualified company or individual, and should provide sufficient detail to ensure that the area will be restored to its natural state. This will include, at a minimum, engineered drawings of existing conditions and grading work to be done, and a plant list detailing species, numbers, locations of plantings, and a monitoring plan to ensure acceptable levels of survivorship over at least 3 years from the date of planting.
- Seeding and planting of appropriate, native plant species on the hillside adjacent to the tributary and to the cut-bank trail at the upstream end of the disturbed tributary.
- Cease any vegetation removal along the roads, and plant with appropriate riparian species such as California bay and California sycamore at an appropriate density. Habitat should be mitigated for at a 3:1 ratio (replaced to lost) based on area of riparian habitat lost; this measures 39.81 acres (based on areas reported in Table 3).
- Install appropriately-sized and engineered crossings that present no barriers to fish passage and are geomorphically stable. If possible, decommission crossings or install bridges.
- Remove the stockpiles of clay and fine-sized sediment to an appropriate, legal off-site location where it cannot enter waters of the state. Remove stockpiles of larger materials, unless they can be used appropriately in the descriptions submitted with the Notification.
- Implement appropriate erosion-control measures to the dirt road and its associated cut banks. These may include re-seeding, installing gravel on the roadways, installing rolling dips and critical dips, and outsloping road surfaces.
- A complete visual encounter survey for amphibians should be conducted to determine whether or not there are any foothill yellow-legged frogs extant in Van Gordon Creek.



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SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

January 30, 2007

Richard Day
P.O. Box 507
Cambria, CA 93428

Dear Mr. Day:

This letter is in response to the questions raised regarding the release of Parcel 17 from the Cambria Ranch Road Association (CRRRA) dated October 26, 2006.

Please review my letter addressed to Hilda Leslie dated September 6, 2006. This letter states the procedure for a property owner to be released from its obligations under the road maintenance association in the CC&Rs. In order to be release from these obligations, the development plan/coastal development permit (DP/CDP) must be amended. The procedure for amending the DP/CDP is to apply for and receive approval of a subsequent DP/CDP.

Approval of a lot line adjustment authorizing the merger of Parcel 17 into an adjoining parcel does not eliminate the need to process an amendment to the DP/CDP.

Approval of the Amendment to Dedication by the Cambria Ranch Road Association of Document No. 2006-059626, recorded August 23, 2006 appears to constitute a violation of the requirements of the amended DP/CDP.

I have forwarded this information to Marie Cowan of the Enforcement Division for appropriate action. Please contact Marie at (805) 781-5704 should you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "M. Neder", is written over a horizontal line.

Martha Neder, AICP, Planner
Planning and Building

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DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

September 6, 2006

Hilda Leslie
P.O. Box 1252
Cambria, CA 93428

Dear Ms. Leslie;

As you know, a development plan/coastal development permit (DP/CDP) (D870020D) authorized the establishment of an approximately 1.7 mile access road (Red Mountain Road) for the Cambria Ranch properties (See the attached exhibit). The conditions of approval of this DP/CDP, which apply to all of the properties, required the formation of a property owner's association for maintenance of this road. All conditions of approval are perpetual and run with the land.

In April 2000, a massive landslide destroyed the access road which connected Red Mountain Road to one of the landowner's parcels; the landowner developed alternative access, and the association members agreed to release the landowner from the road maintenance association. DP/CDP D000263D was processed and approved to revise the conditions of approval of DP/CDP D870020D so that property owner was not required to be part of the road maintenance association. Please see the Covenants, Conditions, and Restrictions section of the attached conditions of approval.

If another property owner wishes to be released from the road maintenance association, they would need to go through the same process (i.e. Apply for and receive approval of a DP/CDP). Because the road maintenance association is a condition of approval and conditions of approval are perpetual and run with the land, the release of any owner of property shown on the attached exhibit from the road maintenance association must be authorized through a subsequent Development Plan/Coastal Development Permit which modifies those conditions of approval.

Please contact me at 805-781-4576 should you have any questions or concerns.

Sincerely,

A handwritten signature in dark ink, appearing to read "Martha Neder", is written over the word "Sincerely,".

Martha Neder, AICP, Planner
Planning and Building

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Appeal of Winsor Request (DRC2011-00043)

Terry Wahler to: Curtis Leslie

01/10/2013 04:05 PM

Mr. Leslie,

As we discussed in our telephone conversation this week, we are targeting February 26, 2013 for the public hearing at the Board of Supervisors to consider your appeal. You indicated that this date would work with your schedule.

In reading through the appeal package dated August 9, 2012 I noticed under the "Basis For Appeal" in the attachment to the appeal form (enclosed for your reference) you were concerned about which appeal form was the correct one to use. The form that you filled out was acceptable for the purposes of meeting the filing deadline, however you indicated that you would "....introduce new evidence....". I have not yet received any additional correspondence from you and would like to offer you an additional opportunity to include this in time for it to be reviewed and responded to in the written staff report. Based on our internal staff report deadlines, I would need to receive additional information from you in two weeks (by January 24, 2013) in order for it to be responded to in the written staff report. We are in the process of scanning the Environmental documents that you were interested in reviewing. I will transmit them to you electronically when the scanning has been completed.

If you have any questions please call me at 781-5621.

Thank you, Terry Wahler



DRC2011-00043_WINSOR_Appeal-attachment.pdf

Terry Wahler, Senior Planner
Land Conservation Program &
Master Planned Communities
(805) 781-5621